

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND SOWERS FUNERAL CHAPEL, INC.  
D/B/A WILLIAMS FUNERAL CHAPEL  
(Establishment License)**

The State Board of Embalmers and Funeral Directors (BoE&FD) and Sowers Funeral Chapel, Inc. d/b/a Williams Funeral Chapel ("SFC") enter into this Settlement Agreement to resolve their dispute as to whether SFC's establishment license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose against it.

BoE&FD and SFC hereto waive their respective rights to a hearing before the Administrative Hearing Commission of the State of Missouri, authorized under Sec. 621.045, and SFC's right to a disciplinary hearing before BoE&FD, authorized under Sec. 536.060, and stipulate to a final disposition of this matter under this Settlement Agreement.

SFC is apprised of the various rights and privileges afforded it under law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses, appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a hearing before BoE&FD, at which it may present evidence in mitigation of discipline; and the right to potentially recover its attorney's fees, incurred in defending this action against its license. Being cognizant of these rights, provided it by law, SFC knowingly and voluntarily waives each of these rights and freely enters into this Settlement Agreement and agrees to abide by its terms.

In furtherance of their settling this dispute, BoE&FD and SFC stipulate that the factual allegations contained in ¶1-¶16, *infra*, are true, although they disagree upon the legal result of

those allegations; yet, to settle their controversy, BoE&FD and SFC stipulate that Licensee's license shall be subject to discipline by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

**Joint Stipulation of Facts and Conclusions of Law**

1. BoE&FD is an agency of the state of Missouri, created and established by §333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Jurisdiction and venue are proper before the Commission, pursuant to Chapter 621, RSMo, and §333.330, RSMo.

3. SFC is a Missouri corporation in good standing and has registered its address with BoE&FD as 609 E. 10<sup>th</sup> Street, Holden, Missouri 64040.

4. The registered agent of SFC is Troy A. Sowers, 1400 S. Maguire St., Warrensburg, Missouri 64093.

5. SFC operates in Missouri under the properly registered fictitious name of Williams Funeral Chapel.

6. SFC holds establishment license number 2007030548, which is now current and active, but had expired, due to non-renewal, from December 31, 2013, until BoE&FD reinstated it on January 29, 2014.

7. SFC failed to renew its establishment license on or before the renewal deadline of December 31, 2013.

8. By letter, dated January 10, 2014, BoE&FD notified SFC that its license had expired on December 31, 2013, and that, until the completed renewal application and applicable

fees were received and processed by BoE&FD, activities, requiring a funeral establishment license, not be performed. BoE&FD's letter also contained certain forms and an explanation of the reinstatement process.

9. SFC signed its 2013 Renewal Notice Funeral Establishment Reinstatement form ("Reinstatement") on January 13, 2014, and submitted it to the Board.

10. BoE&FD received SFC's Reinstatement on January 15, 2014.

11. By facsimile transmissions, dated January 15, 28 and 29, 2014, BoE&FD notified SFC of deficiencies in its Reinstatement and what BoE&FD required of SFC for BoE&FD to complete its processing of SFC's renewal and Reinstatement.

12. BoE&FD issued a renewed and reinstated establishment license to SFC on January 29, 2014.

13. SFC acted as an establishment between January 1-29, 2014, when its establishment license had expired.

14. SFC continued to hold itself out as a licensed establishment during the term, before which BoE&FD reinstated SFC's license.

15. SFC provided final disposition services for two (2) consumers during the term, before which BoE&FD reinstated SFC's license.

16. SFC practiced as a funeral establishment and held itself out as being licensed as a funeral establishment during the term before which BoE&FD had reinstated SFC's license.

17. Section 333.061, RSMo, requires an establishment license and states, in relevant part:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

- (1) That the establishment is under the general management and the supervision of a duly licensed funeral director;
- (2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;
- (3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;
- (4) Each funeral establishment shall have a register book or log which shall be available at all times for the board's inspector and that shall contain:
  - (a) The name of each body that has been in the establishment;
  - (b) The date the body arrived at the establishment;
  - (c) If applicable, the place of embalming, if known; and
  - (d) If the body was embalmed at the establishment, the date and time that the embalming took place, and the name, signature, and license number of the embalmer; and
- (5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

18. Section 333.071, RSMo, restricts the practice of funeral directing or embalming to only licensed funeral establishments and states:

The business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment. This section does not prevent a licensed funeral director owning or employed by a licensed funeral establishment from conducting an individual funeral from another and different funeral establishment or at a church, a residence, public hall, or lodge room.

19. Rule 20 CSR 2120-2.070 sets forth requirements for funeral establishment licenses and states, in relevant portion:

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

\* \* \*

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published[.]

20. Section 333.330.2, RSMo, authorizes discipline against establishment licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

\* \* \*

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

\* \* \*

(14) Violation of any professional trust or confidence[.]

21. BoE&FD promotes the legal conclusion that SFC's conduct, as set forth in ¶1-¶16, *supra*, constitutes SFC's violation of Sections 333.061 and 333.071, RSMo, and 20 CSR 2120-2.070, by reason of which BoE&FD may discipline SFC's funeral establishment license under Section 333.330.2(6), RSMo.

22. BoE&FD promotes the legal conclusion that SFC's conduct, as set forth in ¶1-¶16, *supra*, constitutes SFC's impersonation of a person, holding a valid funeral establishment license, by reason of which BoE&FD may discipline SFC's funeral establishment license under Section 333.330.2(7), RSMo.

23. BoE&FD promotes the legal conclusion that SFC's conduct, as set forth in ¶1-¶16, *supra*, constitutes SFC's violation of a professional trust and/or confidence, by reason of which BoE&FD may discipline SFC's funeral establishment license under Section 333.330.2(14), RSMo.

24. BoE&FD promotes the legal conclusion that it may discipline SFC's funeral establishment license under Section 333.330.2(6), (7), and (14), RSMo.

25. SFC disagrees with the aggregate of BoE&FD's legal conclusions. Similarly, while BoE&FD disagrees, SFC asserts that, when BOE&FD "reinstated" SFC's funeral establishment license on January 29, 2014, its then-issued certificate of licensure authorized SFC to act as a funeral establishment throughout the two-year term, from January 1, 2014, through December 31, 2015, inclusive of January 1-29 of 2014. BoE&FD received and retained SFC's \$250 biennial renewal fee and it proposes to discipline SFC's license, although SFC contends it had acted consistently with the terms of the license that BoE&FD had "reinstated," during the term of that reinstatement.

### Jointly Stipulated Probation Agreement

Neither BoE&FD nor SFC agrees with the other's legal contention; however, to avoid the uncertainty unto hearing before the Administrative Hearing Commission, they agree that the following shall constitute the probation agreement, to be entered by BoE&FD in this matter under the authority of Sections 333.330 and 621.045, RSMo:

26. SFC's license to practice as an establishment is placed on **PROBATION** for a period of **ONE YEAR AND SIX MONTHS** from the effective date of this Settlement Agreement (the "Probationary Period"). During the Probationary Period, SFC shall remain entitled to practice as a funeral establishment, subject to the following terms and conditions:

#### Terms and Conditions of the Probationary Period

27. SFC shall comply with the following terms and conditions during the Probationary Period:

- a. SFC shall keep BoE&FD informed of SFC's current work and home telephone numbers and addresses. SFC shall notify BoE&FD in writing within ten (10) business days of any change in this information. SFC utilizes e-mail, with respect to which, the current and active e-mail address of its funeral director in charge is [williamsfc@embarqmail.com](mailto:williamsfc@embarqmail.com);
- b. SFC shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all of BoE&FD's regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry, including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;



- c. SFC shall engage in no conduct that would give BoE&FD cause to seek authority from the Administrative Hearing Commission to discipline SFC;
- d. SFC shall meet in person with BoE&FD or any BoE&FD representative at any such time and place as required by BoE&FD or its representative, upon reasonable notice.
- e. SFC shall submit written compliance reports to BoE&FD no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on the *hereto-attached* form, which SFC shall complete truthfully, completely and accurately;
- f. Upon the request by BoE&FD or its representative, SFC shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. SFC shall timely renew all licenses and/or registrations, shall timely pay all fees, required for licensure/registration, shall meet all other requirements necessary to maintain, as current and active, all licenses and registrations issued by BoE&FD and shall not allow any license to be suspended for failure to comply with any revenue laws of the state; and
- h. SFC shall accept and cooperate with unannounced visits from BoE&FD, or its representatives, to monitor compliance with the terms and conditions of the Probationary Period.

28. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement

Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

29. Upon the expiration of and SFC's successful completion of the Probationary Period, should SFC then be in compliance with all other requirements of law, BoE&FD's contentions, designed as ¶21-¶24, *supra* shall be thereby fully resolved, as if BoE&FD had never promoted them, except that should BoE&FD determine that SFC has violated any term or condition of this Settlement Agreement, BoE&FD may, after an evidentiary hearing, vacate and set aside the probationary period, imposed herein and impose additional probation, suspend, revoke, or otherwise lawfully discipline SFC's license.

30. BoE&FD shall enter no order imposing *further* discipline on SFC's license or upon the license of any other person or entity, associated with SFC, because of SFC's conduct, as described in ¶6-¶16, *supra*.

31. If BoE&FD determines that SFC has violated a term or condition of this Settlement Agreement, and that such violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, BoE&FD may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation(s).

32. If any violation of this Settlement Agreement occurs during the Probationary Period, BoE&FD may conduct a hearing on the alleged violation, either during the Probationary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Probationary Period occurred and, if so, BoE&FD may impose

further discipline on SFC's license. BoE&FD has continuing jurisdiction to hold a hearing to determine if a violation of the terms and conditions of the Probationary Period occurred.

33. Conditioned on the resolution of this controversy under the provisions of this agreement, SFC, together with its heirs and assigns and its attorney(s), does hereby waive, release, acquit and forever discharge BoE&FD, its respective members and any of its employees, agents or attorneys, including any former BoE&FD members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, that may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement, in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.


34. Each party agrees to pay all its own expenses and fees incurred as a result of this matter or any ensuing litigation.

35. SFC understands that it may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.


36. If SFC requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining SFC's license. If SFC does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of BoE&FD.

37. This Settlement Agreement shall be maintained as an open and public record of the Board, as provided in Chapters 333, 610 and 324, RSMo.

Licensee:

  
By Troy A. Sowers  
Sowers Funeral Chapel, Inc.

Board:

  
Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors


Dated: September 24, 2015


Dated: September 25, 2015

☒ By checking this box, I, Troy A. Sowers, certify that I am authorized by Sowers Funeral Chapel, Inc. to enter into this Settlement Agreement on its behalf.

Approved:

BRYDON, SWEARENGEN & ENGLAND P.C.

By:   
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ATTORNEY FOR BOARD

EFFECTIVE DATE  
10-10-2015  
STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS

State Board of Embalmers and Funeral Directors  
P.O. Box 423, 3605 Missouri Boulevard  
Jefferson City, Missouri 65102

REPORT OF COMPLIANCE

Licensee Name: Sowers Funeral Chapel, Inc. d/b/a Williams Funeral Chapel

License Number: Establishment license no. 2007030548 Due Date: \_\_\_\_\_

1. Have you read the complete order which became effective \_\_\_\_\_, 2015?  
Yes ☐ No ☐ If no, please explain.
2. Do you understand all of section Terms and Conditions of the Probationary Period that begins of page 8 of the order? Yes ☐ No ☐ If no, please indicate what you do not understand or contact the board office for clarification.
3. Does the State Board of Embalmers and Funeral Directors have your current address and telephone numbers, and email if applicable, on file? Yes ☐ No ☐ If no, please explain.
4. Have you complied with all provisions of Chapters 194, 333, and 436 RSMo and all pertinent laws and regulations? Yes ☐ No ☐ If no, please explain.
5. Have you engaged any conduct that would give the board cause to seek authority to discipline from the Administrative Hearing Commission? Yes ☐ No ☐ If yes, please explain.
6. Have you timely renewed all licenses and/or registrations and timely paid all fees required and met all other requirements necessary to maintain all licenses issued by the board?  
Yes ☐ No ☐ If no, please explain.
7. Have you complied with all of the outlined stipulations in the order?  
Yes ☐ No ☐ If no, please explain.

Additional comments:

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Date